

AMENDED IN SENATE MAY 9, 2007

SENATE BILL

No. 784

Introduced by Senator Torlakson

February 23, 2007

An act to ~~add Section 16728 to amend Section 12330 of, to add Article 7 (commencing with Section 16790) to Chapter 4 of Part 3 of Division 4 of Title 2 of, and to repeal Section 16724.4 of, the Government Code,~~ relating to state finance.

LEGISLATIVE COUNSEL'S DIGEST

SB 784, as amended, Torlakson. State General Obligation Bond Law: reports.

The State General Obligation Bond Law sets forth the procedures for the issuance and sale of bonds governed by its provisions and for the disbursement of the proceeds of the sale of those bonds. *Existing law provides for various oversight and reporting requirements for the expenditure of state funds, including the proceeds of bonds.*

This bill would establish new reporting and audit provisions applicable to general obligation bond authorized on or after November 7, 2006, in order to ensure maximum transparency and accountability regarding the expenditure of bond funds. It would require each department or agency responsible for implementing a project funded by bond proceeds to submit in an electronic format to the Department of Finance, the Controller, and the Treasurer specified information about the plans, progress, and completion of the project.

This bill would require the Controller and the Treasurer to ensure that this information is available online in a searchable format accessible through the Treasurer's Web site, and updated at least quarterly, in order to enable the public and officials to analyze and

compare performance on bond projects by multiple criteria, including, among others, responsible department or agency, county of project location, local government agency, and construction contractor. It would require the Treasurer to annually prepare and make available online an executive summary of bond project information, including recommendations to the Legislature and responsible departments or agencies.

This bill also would, effective July 1, 2008, require the Controller to audit particular bond projects and to annually assign 20 auditor positions to conduct these audits. It would grant the Controller authority to access and examine any record of any agency, contractor, and other specified parties that relates to the use of bond proceeds. It would require the Controller, by April 30 of each year, to prepare an audit plan for the following fiscal year

~~This bill would require each state agency and department engaged in the approval or delivery of projects or programs funded with the proceeds of these bonds to report their accountability and oversight procedures to the Treasurer and the Controller. It would also require the Treasurer and the Controller, jointly, to report no less than biannually to the Governor, to the appropriate policy and fiscal committees of the Legislature, and other specified recipients, with respect to all requests for bond issuance submitted by state agencies and departments.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 12330 of the Government Code is
- 2 amended to read:
- 3 12330. (a) At the request of either house of the Legislature,
- 4 or of any committee thereof, the Treasurer shall give written
- 5 information as to the condition of the State Treasury, or upon any
- 6 subject relating to the duties of his or her office.
- 7 (b) The Treasurer annually shall prepare a debt affordability
- 8 report, to be presented to the Governor and the Legislature by
- 9 October 1 of each year.
- 10 (1) The report is intended to be a framework for the Legislature
- 11 to evaluate and establish priorities for bills that propose the
- 12 authorization of additional state debt supported by the General
- 13 Fund, excluding self-liquidating general obligation debt, during

the budget year. The report may also be used to determine the amount to appropriate for debt service for the budget year.

(2) The report shall include the following information:

(A) A listing of authorized but unissued debt that the Treasurer intends to sell during the current year and the budget year and the projected increase in debt service as a result of those sales.

(B) A description of the market for state bonds.

(C) An analysis of the ratings of state bonds.

(D) A listing of outstanding debt supported by the General Fund.

(E) A listing of authorized but unissued debt that would be supported by the General Fund.

(F) A schedule of debt service requirements for the items included in subparagraph (D).

(G) Identification of pertinent debt ratios, such as debt service to General Fund revenues, debt to personal income, debt to estimated full-value of property, and debt per capita.

(H) A comparison of the debt ratios prepared for subparagraph (G) with the comparable debt ratios for the 10 most populous states.

(I) A description of the percentage of the state's outstanding general obligation bonds constituting fixed rate bonds, variable rate bonds, bonds that have an effective fixed interest rate through a hedging contract, and bonds that have an effective variable interest rate through a hedging contract. The report shall also include, for each outstanding hedging contract, a description of the hedging contract, the outstanding notional amount, the effective date, the expiration date, the name and ratings of the counterparty, the rate or floating index paid by the state and the rate or floating index paid by the counterparty, and a summary of the performance of the state's hedging contracts in comparison to the objectives for which the hedging contracts were executed.

(J) *A listing of all appropriations made from bond funds in the annual Budget Act or related trailer legislation, by program, performance measures adopted for each appropriation, and the remaining bondfund balances.*

SEC. 2. *Section 16724.4 of the Government Code is repealed.*

~~16724.4. Any state bond measure approved by the voters on or after January 1, 2004, shall be subject to an annual reporting process, as follows:~~

~~(a) The head of the lead state agency administering the bond proceeds shall report to the Legislature, the Controller, the~~

1 Treasurer and the Department of Finance no later than January 1,
2 2005, or the January 1 of the second year following the enactment
3 of the bond measure, whichever is later, and at least once a year
4 thereafter. The annual report shall contain all of the following:

5 (1) A list of all projects and their geographical location that
6 have been funded or are required or authorized to receive funds.

7 (2) The amount of funds allocated on each project.

8 (3) The status of any project required or authorized to be funded.

9 (b) Costs of the report may be included in the cost of
10 administering the bond measure unless the measure specifically
11 prohibits those expenses.

12 SEC. 3. Article 7 (commencing with Section 16790) is added
13 to Chapter 4 of Part 3 of Division 4 of Title 2 of the Government
14 Code, to read:

15
16 *Article 7. Bond Fund Reporting and Accountability*

17
18 16790. This article applies to any general obligation bond
19 approved by the voters on or after November 7, 2006, including,
20 but not limited to, all of the following:

21 (a) The Highway Safety, Traffic Reduction, Air Quality, and
22 Port Security Bond Act of 2006 (Chapter 12.49 (commencing with
23 Section 8879.20) of Division 1).

24 (b) The Housing and Emergency Shelter Trust Fund Act of 2006
25 (Part 12 (commencing with Section 53540) of Division 31 of the
26 Health and Safety Code).

27 (c) The Kindergarten-University Public Education Facilities
28 Bond Act of 2006 (Part 69 (commencing with Section 101000) of
29 the Education Code).

30 (d) The Disaster Preparedness and Flood Prevention Bond Act
31 of 2006 (Chapter 1.699 (commencing with Section 5096.800) of
32 Division 5 of the Public Resources Code).

33 (e) The Safe Drinking Water, Water Quality and Supply, Flood
34 Control, River and Coastal Protection Bond Act of 2006 (Division
35 43 (commencing with Section 75001) of the Public Resources
36 Code.).

37 16791. It is the intent of the Legislature that the Department
38 of Finance, the Controller, the Treasurer, and all departments and
39 agencies responsible for implementing any project authorized by
40 a bond comply with the requirements of this article in order to

1 *ensure maximum transparency and accountability regarding the*
2 *expenditure of state bond funds and to ensure that the state is*
3 *spending bond funds in the most cost-effective and prudent manner*
4 *possible for the benefit of the public.*

5 *16792. (a) Each department or agency that administers the*
6 *proceeds from the sale of a bond shall submit all reports required*
7 *by this article to the Department of Finance, the Controller, and*
8 *the Treasurer in an electronic format to be determined by the*
9 *Director of Finance.*

10 *(b) Upon appropriation of bond funds for a project, as defined*
11 *by the bond measure authorizing it, the department or agency*
12 *responsible for implementing the project or allocating the money*
13 *for the project's implementation shall report the following*
14 *information:*

15 *(1) A description of the project, including the county with zip*
16 *code in which it is located, a department or agency contact and,*
17 *if it is an acquisition or a construction project, whether it is new*
18 *construction or renovation of existing infrastructure.*

19 *(2) The bond authorization that will provide funds for the*
20 *project.*

21 *(3) Sources of funds other than state bond proceeds that will*
22 *be dedicated to the project, including federal, local, or private*
23 *money, or state non-General Fund money.*

24 *(4) The expected timeline for implementation, acquisition or*
25 *construction, including all milestones, and the expected date of*
26 *project completion, as applicable.*

27 *(5) An estimate of the total cost of the project, the cost of meeting*
28 *each milestone described in paragraph (4), and how much of the*
29 *total cost will be for acquisition or construction and how much*
30 *will be for planning, design, legal, and financing costs. For*
31 *purposes of identifying project costs, interest on the bonds shall*
32 *not be considered a project cost, but shall be separately reported.*

33 *(c) After a responsible department or agency has submitted the*
34 *initial report required by subdivision (b), the department or agency*
35 *shall submit quarterly progress reports that include all of the*
36 *following:*

37 *(1) The total amount that has been spent and whether any of*
38 *the initial expectations about the project, including the cost or*
39 *completion date, have changed. Each change shall be accompanied*

1 *by a detailed, substantive explanation, along with updated costs*
2 *or timeframes.*

3 *(2) A list of all expenditures that exceed the eligibility*
4 *parameters approved by the measure that authorized the bond.*

5 *(3) A description of each contract that has been awarded,*
6 *including the name of the contractor, amount of the contract, and*
7 *expected completion date. This applies to, among other contracts,*
8 *all contracts for architects, engineers, and construction.*

9 *(d) Upon completion of the project, the responsible department*
10 *or agency shall submit a completion report that compares*
11 *performance on the project with expectations identified in the*
12 *initial report.*

13 *16793. (a) (1) The Controller and the Treasurer shall ensure*
14 *that detailed information submitted pursuant to this article is*
15 *available online in a searchable format accessible through the*
16 *Treasurer's Web site, and updated at least quarterly, in order to*
17 *enable the public and officials to analyze and compare*
18 *performance on bond projects by multiple criteria, including,*
19 *among others, the responsible department or agency, county of*
20 *project location, local government agency involved, and*
21 *construction contractor.*

22 *(2) The information made available online may be grouped by*
23 *county and by local government jurisdiction that utilizes the bond*
24 *funds in order to allow residents to see how bond money is being*
25 *used in their communities.*

26 *(b) (1) The Treasurer shall annually prepare and make*
27 *available online an executive summary of bond project information,*
28 *including a summary and analysis of the information reported*
29 *pursuant to this article, and any conclusions and recommendations*
30 *to the Legislature and responsible departments or agencies. This*
31 *executive summary may be in a format that the Treasurer*
32 *determines will provide for useful comparisons of different projects.*

33 *(2) The Treasurer also shall incorporate the executive summary*
34 *in the annual debt affordability report prepared pursuant to*
35 *subdivision (b) of Section 12330.*

36 *(c) The Treasurer's Web site shall include all of the following:*

37 *(1) A capital outlay program that identifies departmental*
38 *infrastructure needs and delineates projects or strategies for*
39 *addressing those needs.*

1 (2) A listing of the projects, programs or other authorized
2 activities being funded under the provisions of each general
3 obligation bond act and a description of each project funded
4 through state lease revenue bonds, and the amounts expended for
5 each.

6 (3) The ongoing in-progress actions being taken to ensure that
7 bond funded projects and activities are remaining within scope
8 and cost.

9 (4) The results of the completed projects, programs or other
10 authorized activities funded from state general obligation and
11 lease revenue bond proceeds.

12 16794. (a) The Controller shall audit particular bond projects
13 in order to ensure that they are implemented in an efficient,
14 cost-effective and timely way and that bond proceeds are spent in
15 a manner that is legal and consistent with the provisions of the
16 authorizing measures. Based on these audits, the Controller shall
17 make recommendations to the Legislature and responsible
18 departments and agencies about how to improve implementation
19 of bond projects.

20 (b) For the purpose of conducting an audit under this section,
21 the Controller shall have access to and authority to examine any
22 record of any agency, contractor, subcontractor, vendor, or other
23 individual or entity receiving, directly or indirectly, bond proceeds
24 if the record is related to the use of those proceeds. For this
25 purpose, the Controller shall have the same authority to access
26 records, and be subject to the same provisions on disclosure of
27 records, as provided for the State Auditor in Article 1 (commencing
28 with Section 8543) of Chapter 6.5 of Division 1.

29 (c) The department or agency responsible for the project being
30 audited shall reimburse the Controller for the actual cost of
31 conducting the audit from the proceeds of bonds allocated for
32 administrative purposes for that project. To cover the cost of each
33 audit, the Controller shall use only those funds allocated for the
34 particular project being audited and not funds allocated for any
35 other project.

36 (d) Any audit conducted by the Controller pertaining to Chapter
37 1.699 (commencing with Section 5096.800) and Division 43
38 (commencing with Section 75001) of the Public Resources Code
39 shall complement, and not replace, the independent audits specified
40 by Sections 5096.953 and 75078 of the Public Resources Code.

1 *To eliminate audit duplication and streamline the audit process,*
2 *the agencies authorized to conduct independent audits under these*
3 *provisions shall first consider contracting with the Controller to*
4 *conduct any independent audit. Funding for an audit authorized*
5 *by Section 75078 of the Public Resources Code shall be subject*
6 *to the administrative cost share limitation specified in Section*
7 *75070.5 of the Public Resources Code.*

8 *(e) The Controller shall, by April 30 of each year, prepare an*
9 *audit plan for the following fiscal year specifying the number of*
10 *projects to be audited, the responsible departments or agencies to*
11 *be audited, and an estimated completion date of the audits. The*
12 *Controller shall annually assign 20 auditor positions to conduct*
13 *the audits specified by this section. If the audit plan identifies a*
14 *need for additional auditors, the Controller may request funding*
15 *in the annual Budget Bill for additional auditors.*

16 *(f) It is the intent of the Legislature that the savings to the state*
17 *from implementing recommendations made as a result of audits*
18 *required by this section fully offset the cost of conducting the*
19 *audits.*

20 *(g) This section shall be effective on July 1, 2008.*

21 **SECTION 1.** ~~Section 16728 is added to the Government Code,~~
22 ~~to read:~~

23 ~~16728. (a) Notwithstanding Section 7550.5, each state agency~~
24 ~~and department engaged in the approval or delivery of projects or~~
25 ~~programs funded with the proceeds of bonds issued pursuant to~~
26 ~~this chapter shall report their accountability and oversight~~
27 ~~procedures to the Treasurer and the Controller.~~

28 ~~(b) Notwithstanding Section 7550.5, the Treasurer and the~~
29 ~~Controller, jointly, shall report no less than biannually to the~~
30 ~~Governor, to the appropriate policy and fiscal committees of the~~
31 ~~Legislature, and to those persons described in Section 9795, with~~
32 ~~respect to all requests for bond issuance submitted by state agencies~~
33 ~~and departments.~~